

ENTERED

January 27, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

VS.

4.587 ACRES OF LAND, more or less, in
STARR COUNTY, TEXAS; and
FLORENTINO LUERA, et al.,

Defendants.

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CIVIL ACTION NO. 7:20-cv-00425

ORDER

The Court now considers “Defendant Luera’s Opposed Rule 5(c) Motion Seeking Permission not to Serve Pleadings on Numerous Defendants.”¹ On January 13, 2021, Defendant Florentino Luera filed his notice of appearance, answer, and motion to dismiss.² Defendant represented in the certificate of service for his notice of appearance that he would serve the notice on all co-Defendants “by certified mail, return receipt requested, to the addresses listed in Plaintiff’s Schedule G.”³ Defendant also represented in the certificate of service for Defendant’s answer that he will serve the answer “on the known heirs identified in Plaintiff’s Schedule G at the addresses listed therein by certified mail, return receipt requested.”⁴ Defendant similarly indicated, in the certificate of service in the motion to dismiss, that he would serve the motion by certified mail.⁵ Nine days later, however, Defendant Florentino Luera filed the instant motion requesting the Court excuse him from the representation he made in the certificate of service in

¹ Dkt. No. 12.

² Dkt. Nos. 8–10.

³ Dkt. No. 8 at 2.

⁴ Dkt. No. 9 at 10.

⁵ Dkt. No. 10 at 12.

the motion to dismiss.⁶ Defendant explains that service of the notice of appearance and answer by certified mail was \$535.80, and Defendant seeks to be excused from incurring further costs by serving the motion to dismiss on all eighty-six known co-Defendants.⁷ Defendant invokes Federal Rule of Civil Procedure 5(c) as authority.⁸

Rule 5(c) concerns only pleadings and empowers the Court to order that pleadings need not be served on “an unusually large number of defendants.” Ordinarily, all papers including motions and pleadings must be served on all parties.⁹ Accordingly, the authority Defendant Florentino Luera invokes to be excused from serving his motion to dismiss on all co-Defendants is inapposite; Rule 5(c) concerns only pleadings and the paper at issue is a motion, not a pleading. Even the authority Defendant points to recognizes this limitation: “It should be emphasized that [R]ule 5(c) does not apply to service on numerous plaintiffs or to papers other than pleadings; all other papers must be served on the attorney for each party. Moreover the filing requirement of Rule 5(d) is not affected by Rule 5(c).”¹⁰

However, Rule 5(a)(2) provides that “[n]o service is required on a party who is in default for failing to appear.” The majority of Defendants in this case have not appeared as of yet, thus, service of the motion to dismiss is excused. Also, Rule 5(b)(2)(C) provides that service by regular mail will suffice, so registered or certified mail is not required for service. Additionally, for a Defendant represented by counsel, service on that Defendant’s attorney also suffices.¹¹ Lastly, “[t]he Notice of Electronic Filing that is automatically generated by the Court’s

⁶ Dkt. No. 12.

⁷ *Id.* at 3–4, ¶ 10 (citing Dkt. No. 12-1 at 2, ¶ 3 (inconsistently identifying only 74 co-Defendants served)).

⁸ *Id.* at 2, ¶ 6.

⁹ FED. R. CIV. P. 5(a); LR5.5 (“All motions must be served on all parties.”).


¹⁰ *United States v. Atlas Lederer Co.*, 282 F. Supp. 2d 687, 702 (S.D. Ohio 2001) (quoting 4B ADAM N. STEINMAN, FEDERAL PRACTICE AND PROCEDURE § 1151 (2d ed. 1987)), *quoted in* Dkt. No. 12 at 3, ¶ 9.

¹¹ FED. R. CIV. P. 5(b)(1).

Electronic Filing System constitutes service of the filed document on Filing Users.”¹² Defendant Florentino Luera’s motion requesting to be excused from service by certified mail of the motion to dismiss and any responses and replies thereto is **GRANTED**.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 27th day of January 2021.

A handwritten signature in black ink, appearing to read "M. Alvarez", is written over a horizontal line.

Micaela Alvarez
United States District Judge

¹² *Administrative Procedures for Electronic Filing in Civil and Criminal Cases*, § 9.A (S.D. Tex. July 18, 2013), <https://www.txs.uscourts.gov/sites/txs/files/admevcrproc.pdf>.